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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,765	12/28/2000	Mitchell R. Swartz		8044

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

The reply filed on 1/7/04 is not fully responsive to the 12/30/03 Office Action because the deficiencies cited regarding the Appeal Brief dated 10/28/03 have not been properly or totally corrected. Specifically:

1. Claims 1-10, 12-19, 21 and 22 have been rejected. Applicant states in the Grouping of Claims Section that the "**appealed claims do not stand or fall together.**" However, there is **still** no discussion in the Arguments section of why EACH claim is considered separately patentable. For example:

a. As to the rejections under 35 U.S.C. 112, 1st paragraph, Applicant provides arguments only for claims 1, 4 and 13. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 21 of the Appeal Brief).

b. As to the rejections under 35 U.S.C. 112, 2nd paragraph, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 92 of the Appeal Brief).

c. As to the rejections under 35 U.S.C. 102, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 100 of the Appeal Brief).

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d. As to the rejections under 35 U.S.C. 101, Applicant provides arguments only for claims 1, 4 and 13. In fact, the arguments for these rejections are mere repetitions of the arguments for the 35 U.S.C., 1st paragraph rejections. No separate, claim-specific arguments are presented for each one of claims 2, 3, 5-10, 12, 14-19, 21 and 22 (see page 131 of the Appeal Brief).

2. The Grouping of Claims section is still improper because it includes arguments as to why claims 1, 4 and 13 distinguish and limit the invention. As stated in the 12/3/03 Office Action, these arguments should be in the Arguments section. See MPEP 1206, "Appeal Brief", for guidance on the content for this section.

3. Contrary to the allegation on page 9 of "Notice of Compliance by Appellant," applicant has not corrected the error cited in Section f, item d) of the 12/30/03 Office Action (see item 75, page 93 of the Appeal Brief). The claims referred to by the Applicant in said item 75 are still incorrect because they are not the claims rejected by the Examiner in the 3/20/03 Final Office Action. Therefore, the arguments presented by the Applicant in this section of the Appeal Brief are non-responsive to the claim rejections because they address the wrong claims.

4. Contrary to the allegation on page 10 of "Notice of Compliance by Appellant," applicant has not corrected Appendix A. Claim 19, as recited, still does not include the term "active" before "quantity".

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5. The purpose of Appendix B is still unclear, e.g., the ZerAEpoint letter.

Since the above deficiencies have been listed in the 12/30/03 Office Action, Applicant's failure to correct them is no longer considered inadvertent.

Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee.

In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in the last Office action (10/28/03).

A fully responsive reply must be timely filed to avoid abandonment of this application.

RJP
3/18/04


MICHAEL J. CANOLE
SUPERVISORY PATENT EXAMINER